Please issue today

19-11-20

G.T.66

1922.

Department of Civil

OFFICE D. Judge.

STATION Madura

Misc. **No.** 431

Dated 3-4-22

	Date	Initial.
To whom sent	**Given for copying**	
	Copied	
	Examined 10	
	Signed	
	Given for despatch	
	Despatched 6/4 4-4-22	
	Indexed	
Pages in the file	**To be destroyed on**	

(SUBJECT.)

Suits (Combatore)

Dt. Munsif's Court, Kollegal - OS. no. 239/21 -

Kunagahatti tank - Water spread -

Removal of bund - Defence Sanctioned

* Not to be filled in the case of permanent records.

H 12-4-22

Land Revenue and Settlement DEPARTMENT.

VE

C.F.—22.

BOARD OF REVENUE 27 MAR 1922 LAND REV. DEPT. MADRAS

Received ..... 191 Registered 1760P 191 .

ENCLOSURES.
No. .....
Spare copies .....

15 28/3/22

Ref: No. 307/22-A-3.

Station Coimbatore., Dated the 23rd March 1922. 191 .

From (Name) H.L. Braidwood, Esq., I.C.S.,

(Designation) Collector of Coimbatore.

To The Secretary to the Board,

Land Revenue & Settlement,

Madras.

Sir,

Suit - Kollegal District Munsif's Court - O.S.No. 239 of 21 - Defence.

(L)

With reference to B.P. Sett., No.184, dated 6th August 1917, the Revenue Divisional Officer, Kollegal, investigated cases of erection of bunds on lands in the waterspread of Government tanks in the Kollegal Taluk. Three such cases were brought to his notice. As a result of notices issued to the owners of the lands concerned, the parties themselves removed the bunds in two cases.

In

In the third case which concerns the Kunagalli tank and which is the subject of the present suit, the party failed to remove the bund, though he promised to do so before the Revenue Divisional Officer, Kollegal, on 2nd December 1919.

2. A further investigation showed that the bund in question which had been put up to the west of patta fields S.Nos. 59 and 60 and south of S.No.60 was mostly in tank poramboke S.No. 61 and the Revenue Divisional Officer took action under the Madras Land Encroachment Act III of 1905 by levying taram and a penalty of Rs.10/- and ordering eviction. The suit is the result of the above order, the reliefs sought for being (1) the issue of an injunction preventing the removal of the bund either by the Government or by the plaintiffs (2) refund of the charge of Rs.10-2-3 levied under Act III of 1905 and (3) such other reliefs as the Court may think necessary.

3. The local Government Pleader states that the suit can be successfully defended if the Government can prove the following points:-

(1) that the bund in question stands on Government land,

(2) that it was the plaintiffs who put it up,

and (3) that it was put up by them recently and not over sixty years ago.

4. The first point can be established as the bund actually lies in poramboke S.No.61. As regards points (2) and (3), Mallana Aradhya, the owner of S.Nos.59 and 60 and the 1st plaintiff has, in his statements before the Revenue Inspector and the Tahsildar dated 17th January 1919 and 7th May 1921 respectively, admitted that the bund to the south of S.No. 60 was put up by him recently (about the end of 1918) and that to the west of S.Nos.59 and 60 was put up by Government about

10 or 15 years ago, which period was altered to one of 60 years in his statement dated 7th May 1921. On 2nd December 1919, the Revenue Divisional Officer enquired him in person when he did not deny that the whole bund was put up by him, but on the other hand agreed to remove the bund within three days. Some of the ryots of the village deposed before the Revenue Inspector on 1st August 1920 that the bund in question was put up by the plaintiff.

5. Apart from the documentary evidence, the bund in question is a benefit to the plaintiff and the presumption is strong that he put it up. Government cannot have put it up as it is a distinct disadvantage to them. So the Court must prefer the oral evidence of Government witnesses to the absurd statement of the plaintiff.

6. The bund is not 60 years old, as the plan of 1877 shows the fields S.Nos.59 and 60 as waterspread, which they would probably not have been, had the bund existed prior to 1877.

7. I request the Board's sanction for the defence of the suit on the lines indicated in the draft written statement sent herewith.

8. The following records are also submitted for reference

(1) Copy of plaint.
(2) Collector's file D.Dis. No.5448/21-A-3.
(3) Kollegal Revenue Divisional Officer's file D.Dis. No. 1156/Rev. of 1919.
(4) do. D.Dis. No.145/Rev. of 192[illegible].
(5) Taluk file D.Dis. No.174/B.M. of 1331.

9. Particulars of the date of hearing etc., are noted below

below.

Date of the plaint.	Date of service of the summons on the Collector.	Date of hearing.
3-1-1922.	29-1-1922.	12-4-1922.

I have the honour to be,

Sir,

Your most obedient servant,

Collector.

I.N.L/23-3-22.

23.3.22

25 MAR 1922

5

Draft Written Statement.

In the Court of the District Munsif, Kollegal.

O.S.No.239 of 1921.

Between:

Mallanaradya and another. .. Plaintiffs.

and

The Secretary of State for India in Council, represented by the Collector of Coimbatore. .. Defendant.

Written Statement of defendant under Order VIII, rule I of C.P.C.

1. The plaintiffs' suit is false and unsustainable and they are entitled to no relief.

2. The defendant denies that Government ever put up the bund mentioned in the plaint as existing west of S.Nos.59 & 60 in Kunagahalli village and the defendant denies the allegation in paragraph 8 of the plaint in this behalf.

2 3. The said two fields are next to the Kunagahalli tank. The whole of S.No.60 and a portion of S.No.59 have always been included in the water-spread of the tank. They are therefore bound to receive and retain water for the benefit of the Government.

3 4. The plaintiffs are not entitled to prevent water from getting into them by any fence or bund. They are not also entitled to claim that the Government should put up bunds and protect the fields by preventing water from getting into them.

4 5. The defendant denies the allegation in paragraph 8

of

of the plaint that the Government put up the bund in question. It was the plaintiffs who put it up to prevent the water of the tank from spreading over the fields.

6. The defendant also denies that the said bund was put up over 60 years ago and states that it was a very recent one put up within about 5 or 6 years ago.

7. The defendant states that the bund in question is objectionable as it restricts the water-spread of the tank and causes the water in the tank to surplus over the weir more quickly than would otherwise be the case and thus affects the lands of other ryots who are entitled to irrigate their fields from the water of this tank and jeopardises the interests of Government.

8. As it was clear that the plaintiffs had put up the bund in question on S.No. 61 (Tank poramboke) and had thus encroached on Government land, taram assessment on the extent encroached upon with a penalty of Rs.10/- was imposed on and collected from, the plaintiffs and they have no right to question the said imposition and levy.

9. The plaintiffs have not stated how they have a cause of action to sue for an injunction to restrain this defendant from removing the bund.

10. The imposition and levy of the said amount cannot give the plaintiffs any cause of action to sue for the injunction which is claimed by them and to which they are not entitled.

11. The suit in so far as the plaintiffs pray for an injunction restraining themselves from removing the bund is liable to be dismissed.

9 12. The plaintiffs are not also entitled to the declaration sought for by them or to a refund of the amount of Rs.10-2-3 paid by them.

13. The present suit which purports to be based on the imposition and levy of the said amount is only a device to retain the bund which the plaintiffs consider very necessary for themselves.

14. In so far as the plaintiffs pray for injunction, the plaint is liable to be rejected as it discloses no cause of action for the same.

10 15. If the Court holds that the plaint discloses a cause of action for the said relief, the defendant states that the suit is bad for misjoinder of causes of action.

N Brailsford
as
Collector.

Kw
23.3.22.

11. The defendant denies all the allegations in the plaint which are not expressly admitted herein & puts plaintiffs to strict proof of same.

12. The defendant prays that the plff's suit may be dismissed with costs.

1921 ஆம் வருடம் 239.

கொள்ளைப்பொருள் திரும்பக் கொடுத்தல் முதலியன.

திருநெல்வேலி ஜில்லா ஸ்ரீவைகுண்டம் தாலுகா கோயில்பத்து கிராமம் கோயில்பத்து நஞ்சை புன்செய் ஆகிய நிலங்களுக்கு — பட்டாதாரர்.

திருநெல்வேலி ஜில்லா ஸ்ரீவைகுண்டம் தாலுகா கோயில்பத்து கிராமம் கோயில்பத்து நஞ்சை புன்செய் ஆகிய நிலங்களுக்கு — பட்டாதாரர்.

Handwritten translation
Please see
M2-10 of
7 (N)
Cases OOs 5448/21 &
dt 6.1.22

இராஜாமணி — வாதிகள் கி. பூமிநாத ஏகாம்பரம் 1வது கோ பத்து வெள்ளாளர் மீது.

1. வாதிகள். வெள்ளாளர் முதலான கோயில்பத்திலுள்ளவர்கள் மேற்படி ஆண்டு நஞ்சை புன்செய் விளைவுகளை நிலவரம் கொள்ளைப்பொருள் நஞ்சை வகை கிராம 70 வருஷத்துக்கு கொள்ளைப்பொருள் நஞ்சை 1, மானாவாரி நஞ்சை நிலவரம் 10 வருஷ கொள்ளைப்பொருள் வகை 28 வருஷத்துக்கு கோயில் நஞ்சை 2.

2. பிரதிவாதி கிருஷ்ண வெள்ளாளர் ஸ்ரீவைகுண்டம் கிராமம் கோயில்பத்து கோயில் நஞ்சை புன்செய் விளைவுகளை நிலவரம் கொள்ளைப்பொருள் நஞ்சை வகை.

இவ்வாதிகளுக்கு வாதிகள் வழக்குரை.

3. மேற்படி கோயில்பத்து கிராமத்தில் ஸ்ரீவைகுண்டம் தாலுகா — முதலாம் வாதிகளுக்கு சொந்தமானது.

4. மேற்படி கிராமம் கிராமப் பஞ்சாயத்தார் முதலாம் வாதிகளுக்கு வரவேண்டியது.

5. வருஷந்தோறும் நஞ்சை மானாவாரி வருஷங்களில் மேற்படி நிலங்களுக்கு நஞ்சை 1, மானாவாரி, மேலும் மேலும் நிலங்களுக்கு 10 ரூபாய் முதல் கொள்ளைப்பொருள் பெறுவதற்கு கோயில்பத்து கிராமம் முதலாம் வாதிகளுக்கு 30-12-20 தேதியில் உரிமை உண்டு.

6. மற்ற உரிமைகளில் வாதிகள் ஸ்ரீவைகுண்டம் கோயில்பத்து கிராமத்தில் மானாவாரி நஞ்சை புன்செய் விளைவுகளை கொள்ளைப்பொருள் பெறுவதற்கு கோயில்பத்து கிராமம் முதலாம் வாதிகளுக்கு 10-2-3 மற்ற கோயில் கிராமப் பஞ்சாயத்தில் 25-5-1921 தேதியில் தீர்ப்பு செய்து வருகிறார்கள்.

7. மற்றவை வாதிகளுக்கு முன்பு தீர்ப்பாணை — வாதிகளுக்கு சாதகமாக.

8. இவ்வழக்கில் பிரதிவாதி முதலாம் வாதிகளுக்கு

இதைப் பின்னர் கோட்டாட்சியர் (தி) அவர்கள் இதைப்பற்றி விசாரணை செய்து அறிக்கை கோட்டாட்சியர் அவர்களுக்கு தெரிவிக்கும்படி எழுதியுள்ளார்.

முடிவுரை.

இதைப்பற்றி விசாரித்ததில் கடந்த 59-60ஆம் ஆண்டுகளில் பெய்த மழையினால் ஏற்பட்ட வெள்ளத்தால் சேதமடைந்த வீடுகளுக்கு அரசு நிவாரணம் வழங்கி விட்டதாகவும் மேற்கொண்டு எவ்வித நிவாரணமும் தேவையில்லை என்றும் தெரிவிக்கப்பட்டுள்ளது.

(தங்கள் உண்மையுள்ள உதவியாளர்)

(True copy)

For Collector

25 MAR 1962

Date of Hearing 12-4-22

Subject.— Suit: Coimbatore- Dt Munsif's Court, Kollegal- O.S. No 239/21- Kunigahalli tank- Water spread- Removal of bund - Defence sanctioned

S. F. XXII-A-19 -5,492-14-4-21.

FOR MEMBER

M3

A.S(Selt).

Third/B Section.

(Encroachment)

Section

READ AGAIN B.P., No. _____ dated _____ 192

" " _____ " _____ 192

Item A Section.

READ ALSO :—

Register No. H 609 From the Coll. of Coimbatore, No. 307/22-A-3, dated 23-3- 1922.

" " " " " " " 192.

" " " " " " " 192.

RESOLUTION. (Mis) No. 431, dated 3-4-1922

O.K. The draft written statement submitted by the Coll^r is rather verbose. It has been revised in the office.

(Encl=) Cf

The Board sanctions the defence of the suit and approves the draft written statement as revised and annexed to these Proceedings.

M 224 infra

A.S (Selt)

A.S

May this issue!

IS 2/4/22

2/4/22

3.4.22

IS 28/3

2/ 28.3.22

Do. The Collector of Coimbatore with a revised draft written statement and records returned.

L.R. Note

Para 3 of W.S. for "are" in line 2, "has" may perhaps be intended. For the words "getting into them" it seems better to

Say " getting into the field in question"

Penalty was Collected on 25.5.21; Suit was instituted on 3.1.22

One plea of limitation may be raised.

Para 8. The first part is for Consideration. ~~Collection of penalty~~ does give rise to a Cause of Action

A.S (Sell)

Under SLR 3.8 madras 92 the period of 2 months covered by the suit notice should also be taken into account in calculating limitation. Hence the suit does not appear to be time barred. There is however, no harm in raising this plea as suggested by Section 16

3.4.22.

3.4.22

Shown marked to counsel 3.4.22

Shown marked to counsel in footprint.

Draft written statement.

In the Court of the District Munsif, Kollegal

O.S. No. 239 of 21.

Between: Mallanaradya and another Plaintiffs

and

The Secretary of State for India in Council, represented by the Collector of Coimbatore } Defendant

Written statement of defendant under Order VIII, rule 1 of C.P.C.

1. The plaintiffs' suit is false and unmaintainable and the plaintiffs are entitled to no relief.

2. S. No. 59 and 60 of Kunagahalli village belonging to the plaintiffs are next to the Kunagahalli tank. The whole of S. No. 60 and a portion of S. No. 59 formerly belonging to the plaintiffs have always been submerged by the water spread of the tank flowing from Kunagahalli South in June 61 and are bound to receive and retain water for the benefit of the Government.

3. The plaintiffs are not entitled to prevent water from getting into their fields by any fence or bund. They are not also entitled to claim that the Government should put up bunds and protect the fields by preventing water from getting into them.

4. The defendant denies the allegation in paragraph 8 of the plaint that the Government put up the bund in question. It was the plaintiffs who put it up to prevent the water

water of the tank from reaching [illegible] the fields.

5. The defendant also denies that the said bund was put up over 60 years ago and states that it was only recently put up within about 5 or 6 years ago.

6. The defendant states that the bund in question is objectionable and restricts the water spreading the tank and causes the water in the tank to surplus over the weir more quickly than would otherwise be the case and thus affects the irrigation of lands of other ryots who are entitled to irrigate their fields from the water of this tank and jeopardises the interests of Government.

7. As it would appear the plaintiffs had put up the bund in question on S. No 61 (tank poramboke) and had thus encroached on Government land, taram assessment on the extent encroached upon with a penalty of Rs 10/- was imposed on and collected from the plaintiffs, and they have no right to question the said imposition and levy.

8. The imposition and levy of the said amount cannot give the plaintiffs any cause of action to sue for the injunction which is claimed by them and.

and to which they are not entitled

9. The plaintiffs are not also entitled to the declaration sought for by them or to a refund of the amount of Rs 10-2-3 paid by them

10. If the court holds that the plaint discloses a cause of action for the said relief, the defendant states that the suit is bad for misjoinder of causes of action. 11. The suit is also barred by limitation

12. The defendant denies all the allegations in the plaint which are not expressly admitted herein and puts plaintiffs to strict proof of them

13. The defendant prays that the plaintiffs' suit may be dismissed with costs.

19
28/3/22

2
28.3.22

2-4-22